

REMARKS

Before turning to the merits of this rejection, the Applicant wishes to point out that the changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do indeed apply to this application since the present application was filed on or after November 29, 1999. MPEP § 706.02(l)(1). The effective date of the AIPA cited by the Patent Office in the Office Action mailed on June 4, 2002 on page 2 points out an incorrect effective date of November 29, 2000 for the AIPA.

Applicant, now named Gilbarco Inc., was formerly known as Marconi Commerce Systems Inc. Gilbarco Inc. performed a corporate name change in 1999 to be named Marconi Commerce Systems Inc, and then performed another corporate name change in 2002 to be renamed back to Gilbarco Inc. Throughout this time, the corporation did not change except by name only, and the inventors of the present Applicant as well as the inventors of U.S. Patent No. 6,294,148 B1, Myers et al., were under a common duty to assign to Marconi Commerce Systems Inc., now Gilbarco Inc.

Rejection of Claims 1-46 Under 35 U.S.C. § 102(e) – Myers

The Patent Office rejected claims 1-46 under 35 U.S.C. § 102(e) as being anticipated by Myers et al. (U.S. Patent No. 6,296,148 B1).

Myers does not anticipate the present application, because each of the independent claims in claims 1-46 of the present application all contain at least one element and/or limitation that is not disclosed expressly or inherently in Myers. In order for a rejection under § 102 to be proper, the reference cited must expressly or inherently disclose each and every element and/or limitation in the rejected claim.

Myers discloses a method and apparatus for detecting tampering with a device inside the fuel dispenser that generates a digital pulse stream indicative of the amount of fuel flow through a meter, also called a "pulser." A pulser is connected to a meter inside the fuel dispenser such that the pulser generates a digital pulse stream indicated of the fuel flow rate through the meter. A pulse is generated for a quantity of fuel flowing through the meter. For example, 1000 pulses may be equivalent to 1 gallon of fuel. Fraud can occur when a person tampers with the pulser. First, the pulser may be tampered with to cause additional pulses to be generated than actual fuel flow delivered causing the customer to be charged in excess of fuel received. Second, the pulser

may be tampered with to cause the pulser to skip or not generate all proper pulses so that the customer is not charged as much for fuel as the amount of fuel received. An anomaly is placed in the pulser that is expected and detectable by the fuel dispenser. The anomaly is stored inside the fuel dispenser in its memory before operation as well, where it is then called a "signature." If the pulse stream generated by the pulser that includes the anomaly matches the signature stored in memory, then the fuel dispenser knows that no tampering has occurred with the pulser.

In the present invention, the actual fuel flow rate measured by the fuel dispenser meter is compared with some other reference amount indicative of the fuel flow rate to determine if the actual and reference amounts differ from each other as an indication of fraud. This is a limitation in all of claims 1-46 currently in the present application for examination. This is unlike Myers where the pulser output indicative of actual fuel flow rate is scanned by the fuel dispenser for unexpected anomalies in the pulse signal generated by the pulser (Myers, Abstract; Figures 9-15; Summary of the Invention - column 1, line 57 - column 2, line 12; column 2, lines 36-44). Myers does not compare the actual fuel flow rate to a reference related to the fuel flow rate. The signature in Myers is not a reference related to fuel flow rate, but a signature of the pulse generating device that can show tampering with the pulse generating device. Myers is simply looking for an unexpected anomaly in the pulser data signals indicative that tampering has occurred to the pulser.

Therefore, since Myers fails to inherently or expressly disclose each and every element an/or limitation of claim 1-46 of the present application, claim 1-46 of the present application are allowable.

Further, since the present application was filed on or after November 29, 1999 and is subject to 35 U.S.C. § 103(c) as amended by the AIPA, Myers cannot be used as a reference in any presented § 103 obviousness rejection as well, although Applicant by this statement is not admitting or suggesting that the present invention is obvious in view of Myers by itself or in combination with other references whatsoever. Applicant reserves the right to address the any obviousness rejections by the Patent Office based on Myers or any other references that are the same or similar to Myers.

Attached is a marked-up version of the amendments made to the application by the current response. The attachment is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Starting at page 1, line 3 of the Specification:

--The present application is related to the concurrently filed, commonly invented, commonly assigned application serial no. [] 09/494,825, entitled FUEL DISPENSER FRAUD DETECTION SYSTEM; application serial no. [] 09/494,902, now U. S. Patent No. 6,438,452, entitled FRAUD DETECTION THROUGH TIME ANALYSIS; application serial no. [] 09/495,024, entitled FRAUD DETECTION THROUGH TANK MONITOR ANALYSIS; application serial no. [] 09/494,903, now U.S. Patent No. 6,213,172, entitled FRAUD DETECTION THROUGH VAPOR RECOVERY ANALYSIS; application serial no. [] 09/495,027, entitled FRAUD DETECTION THROUGH GENERAL INFERENCE; and application serial no. [] 09/495,022, now U.S. Patent No. 6,421,616, entitled FRAUD DETECTION THROUGH INFERENCE, which are all hereby incorporated by reference.--